

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

O.F., <i>aminorbyandthroughherguardian</i>	:	
<i>andnextfriend</i> ,N.S., c/oCHESTER	:	
SPECIAL EDUCATION LAW CLINIC	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO.00-779
CHESTER UPLAND SCHOOL DISTRICT,	:	
et.al.	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

April 19, 2000

Presently before the Court is Defendant Chester Upland School District's Motion to Dismiss. For the reasons given below, the Motion is Granted in part and Denied in part.

Plaintiff O.F. ("Plaintiff" or "O.F."), by and through her guardian and in care of the Chester Special Education Law Clinic, instituted this action against Chester Upland School District ("District"), Pennsylvania Department of Education ("PDE") and Eugene Hickok, the Secretary of Education of the Commonwealth of Pennsylvania ("Hickok"), on February 11, 2000. The Complaint alleges that Defendants failed to provide Plaintiff with a Free Appropriate Public Education ("FAPE") as required under the Individuals with Disabilities Education Act ("IDEA"). Count II is a claim for violations of Section 504 of the Rehabilitation Act, whereas Count III states that Defendants violated the American with Disabilities Act ("ADA"). Count IV is a § 1983 claim for Defendant's violation of various federally protected rights of the Plaintiff.. Count V is a claim for false imprisonment.

I.BACKGROUND

According to the Complaint, O.F. is a resident of the District who has been diagnosed with a severe emotional disturbance. The emotional disturbance entitles O.F. to receive special education and related services pursuant to the IDEA and medical assistance as an eligible disabled child pursuant to Title XIX of the Social Security Act. The instant action arises from an incident which occurred on February 11, 1998. On that date, O.F. attended the District's Columbus Elementary School. ¹Early in the afternoon, O.F. was physically threatened by another student in the presence of District employees. O.F. became agitated and started screaming. She ran into the principal's office where she was restrained by three District employees. Eventually, Chester police officers arrived. They proceeded to handcuff O.F., place her legs in restraint and removed the child by ambulance to Crozer-Chester Medical Center. Ultimately, O.F. was transferred to the Devereux/Mapleton School (a private school approved by the PDE).

II.LEGAL STANDARD

Defendants argue that the cases should be dismissed for lack of jurisdiction under Fed.R.Civ.P. 12(b)(1). A motion to dismiss on jurisdictional allegations should be judged by the same standards as a Rule 12(b)(6) motion to dismiss. See Moretnsion v. First Federal Sav. and Loan Ass'n, 549 F.2d 884, 890 (3d Cir. 1977). When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt... the plaintiff can prove no set of facts in

1. O.F. was a 4'10", nine year old who weighed approximately 90 pounds in February, 1998.

support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rock v. City of Philadelphia, 868 F.2d 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F. Supp. 893, 895 (E.D. Pa. 1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). The Court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Namiv. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996).

III. DISCUSSION

A. Exhaustion of Remedies: IDEA Claim

Under the IDEA, children with disabilities are entitled to "a free appropriate public education which emphasizes special education and related services designed to meet their unique needs...." 20 U.S.C. § 1400(d). In order to meet the "unique needs" of the child, the IDEA provides procedural safeguards to permit parental involvement in all matters concerning the child's educational program and allows parents to obtain administrative and judicial review of decisions they deem unsatisfactory or inappropriate. Under this scheme of procedural protections, parents are entitled to...an opportunity for an "impartial due process hearing" with

respect to any [complaints about the child's Individualized Educational Program ("IEP"). § 1415(f)(1).²

The IDEA requires that "before the filing of a civil action... seeking relief that is also available under this subchapter," a plaintiff must exhaust the IDEA procedures, which include a local due process hearing and an appeal to the state agency. 20 U.S.C.S. 1415(f). Where recourse to IDEA administrative proceedings would be futile or inadequate, however, the exhaustion requirement is excused. See Honig v. Doe, 484 U.S. 305, 326-27, 108 S.Ct. 592, 605-06 (1988) (also noting that it is plaintiff's burden to prove that exhaustion would be futile or inadequate). The Third Circuit has held that when the relief sought in a civil action is not available in an IDEA administrative proceeding, recourse to such proceedings would be futile and the exhaustion requirement is excused. See W.B. v. Matula, 67 F.3d 484, 495-496 (3d Cir. 1995); Lester H. v. Gilhool, 916 F.2d 865, 870 (3d Cir. 1990).

Plaintiff in the present case requests both money damages (Compl. ¶ 17) and injunctive relief requiring immediate implementation of crisis intervention procedures (Compl. Prayer). Both sides agree that the money damages called for in the Complaint are not available relief from an IDEA administrative proceeding. Therefore, Plaintiff can proceed without exhausting the administrative procedures. See Matula, 67 F.3d at 496; Jeffrey Y. v. St. Mary's Area School District, 967 F.Supp. 852, 854 (E.D. Pa. 1997) (Disabled students seeking only monetary relief as against school districts and various district officials and employees under Individuals with Disabilities Education Act (IDEA) were not required to exhaust administrative

2. Plaintiff's Complaint states that O.F. already had an established IEP and that the District has violated it.

remedies before commencing judicial actions, as monetary relief was unavailable in administrative proceedings).

A second reason for waiving the exhaustion requirement is that there is already a factual record of Plaintiff's required evaluation, classification and placement. See Lester H., 916 F.2d at 870. In this case, O.F. has already been identified as a member of the protected Duane B. class. There need not be a factual inquiry to determine what level of care he should receive which would happen at an administrative hearing. The Plaintiff is bringing this action for non-compliance with the IDEA by the District. Specifically, the Plaintiff alleges that the District did not comply with O.F.'s IEP and other requirements by not placing the student in an appropriate school and by not instituting proper control procedures in violation of the IDEA. Plaintiff believes that the Administrative hearing would be futile and unnecessary to correct these problems. See McKellar v. Chester Upland School District, 29 IDELR 1064 (E.D. Pa. February 23, 1999) (exhaustion requirement waived because it would have been futile to protest the District's non-compliance with the already established IEP of student). A broad reading of Plaintiff's allegations finds that the District violated the O.F.'s already established IEP, and by doing so, failed to provide her a FAPE. Since the District has a history of failing to comply with the requirements placed on it by the IDEA, the Plaintiff understood that using administrative procedures would be futile. At the motion to dismiss stage, these allegations are enough to survive.

B. ADA Claim

In order to prevail on an ADA claim, a plaintiff must show:

1) that he is a qualified individual with a disability; 2) that he was excluded from participation in or denied the benefits of a public entity's services, programs, or activities; and 3) that such treatment was by reason of his disability. 42 U.S.C. § 12312. Plaintiffs may circumstantially allege that O.F. was discriminated against stating facts that could show gross misjudgment, or bad faith, on the part of the school officials. See McKellar 29 IDELR at *6.; See also Hoekstrav. Independent Sch. Dist. No. 283, 103 F.3d 624, 627 (8th Cir. 1996).

In the present case, the Plaintiff alleges that she was discriminated against because of her disability. See Compl. ¶¶ 27-31. It is debatable whether the Plaintiff has alleged facts suggesting the District's gross mismanagement, but the Third Circuit does not seem to have explicitly adopted this more stringent standard. cf., Sellars v. Board of Education of Manassas, Va., 141 F.3d 524, 528 (4th Cir. 1998). ³For now, the assertion that Plaintiff was excluded from services as a result of her disability is sufficient to allow the ADA claim to survive dismissal.

C. § 1983 Claim

Only when a government's policy or custom inflicts the injury to a plaintiff's federally protected rights is a local government responsible under § 1983. See Monell v. Dep't of Social Services of the City of New York, 436 U.S. 658, 694 (1978). Plaintiff has alleged that Defendant's "policy" of non-compliance with the requirements of O.F.'s IEP, and various Court Orders arising from the Duane B. case, deprived O.F. of her rights under the IDEA, ADA and Rehabilitation Acts. Therefore, her § 1983 claims may proceed based on violations of these

3. "To prove discrimination in education context, under Rehabilitation Act, something more than mere failure to provide free appropriate education required by Individuals with Disabilities Education Act (IDEA) must be shown; either bad faith or gross misjudgment should be shown before Rehabilitation Act violation can be made out in context of educating handicapped children". Courts have generally applied the same standard to ADA claims as to claims under the Rehabilitation Act.

federally protected rights. However, the Plaintiff has not made sufficient factual allegations that her constitutional rights under the IV, V and XIV Amendments were violated. Therefore, the § 1983 claims based on violations of these constitutional protections must be dismissed.

D. False Imprisonment

The Political Subdivision Tort Claims Act (“TCA”) provides that, as a general rule, and with limited exceptions, municipalities and their officials are immune from tort liability:

Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof for any other person. 42 Pa. C.S. § 8541.

School Districts are local agencies accorded governmental immunity pursuant to the TCA. See Cott v. School Dist. of Philadelphia, 562 A.2d 1029, 1031 (Pa. Cmwlth 1989). Exception to the general immunity of local agencies pursuant to § 8541 are limited by § 8542(a) of the TCA to injuries caused by negligence. Negligence is defined in Section 8542(a)(2) as not including willful misconduct. See Mascarov v. Youth Study Center, 89 Pa. Commonwealth Ct. 388, 492 A.2d 786 (1985). The Plaintiff here alleges the intentional tort of False Imprisonment. ⁴This is a claim to which municipalities are immune. See Laney v. City of Pittsburgh, 663 F. Supp. 1097 (W.D. Pa. 1987) (general tort immunity applied to false arrest and false imprisonment claims). Therefore, Plaintiff’s claim for False Imprisonment will be Dismissed.

4. The elements of a False Imprisonment claim are 1) the detention of another person, and 2) the unlawfulness of such detention. See Renk v. City of Pittsburgh, 641 A.2d 289, 291 (Pa. 1994). The Court takes no position as to whether the Plaintiff has sufficiently stated a claim for False Imprisonment. The Plaintiff has agreed to withdraw the False Imprisonment Claim if the Court found it to be within the TCA.

IV. CONCLUSION

The Plaintiff may proceed on her claims of violations of the IDEA, ADA and Rehabilitation Acts while also pursuing § 1983 claims for such violations. However, her § 1983 claims for violations of constitutional protections and for False Imprisonment must be Denied.

An appropriate Order follows.

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	:	
Defendants.	:	

ORDER

ANDNOW,this19thdayofApril,2000,uponconsiderationofDefendant
ChesterUplandSchoolDistrict’sMotiontoDismiss(DocketNo.6),andthePlaintiff’sResponse
thereto(DocketNo.7);itishereby **ORDERED** thatDefendants’Motionis **GRANTED** inpart
and**DENIED** inpart.Morespecifically,itis **FURTHERORDERED** that:

1. CountVofPlaintiff’sComplaintforFalseImprisonmentisDismissed.
2. CountIVforviolationsoftheIV,VandXIVAmendmentsunder§1983
areDismissed.
3. Inallotherrespects,Defendant’sMotionis **DENIED**.

BYTHECOURT:

RONALDL.BUCKWALTER,J.